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CORRESPONDENCE.

THE VENEZUELAN QUESTION : REPLY TO MR. TUCKER.

To the Virginia Law Register :

There is no man in Virginia whose opinion upon questions of constitutional or international law the writer would value more than those of Mr. John Randolph Tucker. Nor, in fact is his respect for Mr. Tucker's ability confined to these subjects, but he has, during his whole manhood life, been accustomed to look up to him as a great lawyer, economist and statesman. Nevertheless, even Mr. Tucker may, like the great Homer, nod sometimes, hence this temerity in venturing to criticize, even, his able paper in the REGISTER for January.

A more succinct, clear and accurate statement of the fundamental principles of international law has never met the writer's gaze. But when Mr. Tucker comes to the application of the Monroe doctrine to the case of Venezuela, there are many well informed on the subject who will join issue with him.

Whilst Mr. Tucker epitomizes accurately the message of President Monroe, he does not place his divisions or classes in their proper order, but places the declaration against future colonization last, which to some extent indicates that this declaration is the least important in the present case.

The declaration in the message against colonization by any European power is peculiarly pertinent to the present issue.

If the fact is, as generally believed in this country, that England has, from her base of operation in what was formerly Dutch Guiana, allowed her citizens as adventurers, gold seekers or otherwise, to penetrate and settle in whole or in part the territory that rightfully belonged to Venezuela and then followed them with her protecting shield of a claim backed up by her great navy and army, then *this is colonization* just as much as if another John Smith had landed on the coast of South or North America, and claimed the land in the name of her Gracious Majesty Queen Victoria. As to whether England has thus substantially colonized a part of Venezuela and then made her claim is a question of fact, not necessary to be determined in this discussion. But this much is certain, that England does claim, and does not consider her claim open for argument, negotiation or arbitration, that territory within the Schomburgk line and ten thousand square miles beyond; and, on the other hand, that Venezuela never has admitted the Schomburgk line as the boundary, and that Lord Aberdeen when Prime Minister of Great Britain abandoned the claim to it as a *settled* boundary and substantially admitted it to be a tentative boundary only, by pulling up the posts set down by Schomburgk.

Mr. Tucker's statement of the Law of Nations and the Monroe Doctrine seems absolutely correct, and when he quotes with approbation Mr. Jefferson's words: "Our first and fundamental maxim should be never to entangle ourselves in the broils of Europe; our second, never to suffer Europe to intermeddle with cis-Atlantic affairs," it would appear as if he were writing substantially in accord with the President and Secretary Olney; but the paragraphs I shall now quote show plainly the parting of the ways.

"The question now comes up," says Mr. Tucker, "Does Great Britain design to violate the Monroe Doctrine in the matter of her boundary with Venezuela?" Her Prime Minister in effect says she does not. She proposes to settle the boundary and to take what she is entitled to under the Dutch cession of 1796."

He continues: "Does a settlement of boundary line *bona fide* made, though Great Britain gets more than Venezuela admits, or than the United States would admit, amount to a new colonization? If made *mala fide*, and if, under cover of settling a boundary, Great Britain should grasp more than she is properly entitled to, it might be so regarded."

In answer to this it may be said that Great Britain has distinctly refused to arbitrate a large part of the territory in dispute and has given Venezuela her ultimatum, which means, agree to that, or fight. And what war between a giant and a pigmy means everybody knows.

"Does England design to violate the Monroe Doctrine?" Mr. Tucker asks. We in this country do not know exactly what England designs (or intends); but through Lord Salisbury she does say that the doctrine has nothing to do with the case, and her press represents the President's message as an ante-election trick to catch the jingo vote. It is not a question of intent, it is a question of title, which England would like to decide as her own Cromwellians did by "infallible artillery" from her great ships.

In the same paragraph Mr. Tucker says: "*She*, Great Britain, proposes to settle the boundary and take what she is entitled to under the Dutch cession of 1796." But is that all? may well be asked.

"*She proposes*" to settle; not a word about what Venezuela proposes to do, or wishes, or, under either the *jus* or the *lex*, has the right to do. But in his, Mr. Tucker's mind, it is a question of what Great Britain proposes to do or settle, and, moreover, "to take what she is entitled to under the Dutch cession of 1796."

Suppose Great Britain had pushed forward (after President Monroe's famous message to Congress) her citizens or subjects to drive out the Indian and buffalo from our great western territory, and settlements had been made on both sides of the Rocky Mountains, and that she had then claimed this territory as part of Canada.

Would not that be regarded as colonization? Would it not be in substance the same as the landing of Columbus and taking possession of the land in the name of Ferdinand and Isabella? The latter was proper at that time; but since 1823 the Monroe Doctrine stands in the way. It is true we did settle our boundary dispute with Great Britain as to our northern frontier in 1842 by treaty, and I hardly think any sane man in the United States would dispute Venezuela's right to do likewise with Great Britain now. Mr. Cleveland, as quoted by Mr. Tucker, expressly affirms this right.

There is another point in the case of the United States against Great Britain that seems to have escaped the notice of Mr. Tucker, as well as the press, so far as the writer has observed. It is stated in this language (without the italics) in Mr. Tucker's syllabus of the Monroe Doctrine: "We could not view any interposition for the purpose of *oppressing* (governments on this side of the Atlantic whose independence we had acknowledged) or *controlling in any manner their destinies* by any European power, in any other light than as a manifestation of an unfriendly disposition towards the United States."

This is very pertinent and important from the standpoint of this country, for it declares what was then at least the policy of our Government. But does it apply here?

This query suggests another. Has Great Britain encroached upon Venezuela? This brings the whole matter to a question of fact, or geography, the solution of which can only be made by a fair enquiry upon all the evidence that can be adduced, whether in the form of history, maps, official acts of Venezuela or Great Britain, or otherwise. There may, of course, be subordinate questions as to the weight of certain evidence, the interpretation of treaties, &c. This is the whole subject in the last analysis. If England claims no more than the Dutch cession, neither the United States nor Venezuela has anything to do with the case; but on the other hand if England is forcibly wresting territory from a weak nation, which, however, in the eyes of International Law is her equal, *she is oppressing her and controlling her destiny*, contrary to the law of nations (which prohibits robbery) as well as the above pledge contained in the Monroe doctrine.

The next and last criticism to be made on Mr. Tucker's paper is suggested by the following extract therefrom: "But it is insisted, if this cannot be done, Great Britain should submit the question to arbitration. This is a very fair suggestion. But who shall be the arbitrators? The United States prefer they should be American. Great Britain prefers a larger range for selection.

"It cannot be held that the United States have the right either to dictate to Great Britain the arbitrators, or their character; and then make it a *casus belli* if Great Britain does not yield to the dictation. The United States would not yield in like case. Why insist that Great Britain should do what they would refuse?"

"But who shall be the arbitrators? The United States prefer that they should be American. Great Britain prefers a larger range for selection," according to our author. He further says: "The United States cannot dictate to Great Britain the arbitrators, or their character." Of course not. But as dear old Dr. McGuffey, of the University of Virginia, used to say, we must first enquire as to the "*an sit*," and then the "*cur sit*"—the "is it," before the "why is it." In point of fact, the United States have never made such a preposterous claim, request or demand.

He refers a little further on in his paper to the commission appointed by the President for getting information for the benefit of this country, and upon which to base her future action according to her best judgment under existing circumstances.

The commission is not a board of arbitration, and is not to decide without hearing either party to the dispute, as Mr. Tucker literally asserts. It is to *decide* nothing, and it was evidently intended that it should open wide its portals to both parties and all others who can enlighten it, this government, and the world—"*urbem et orbem*."

The official declaration of this commission immediately upon its organization as to its authority, methods and purposes is of itself a sufficient answer to this accusation. The *Washington Post* of January 20th, 1896, or near that date, published the following statement from the commission:

It must have suggested itself to you, as it no doubt has to the President, that this commission thus authorized to ascertain and report the boundary line between two foreign nations bears only a remote resemblance to those tribunals of an interna-

tional character, of which we have had several examples in the past. They were constituted by or with the consent of the disputants themselves, and were authorized by the parties immediately concerned to pronounce a final judgment. The questions at issue were presented by the advocates of the various interests, upon whose diligence and skill the tribunal might safely rely for all the data and the arguments essential to the formation of an intelligent judgment. Their functions were, therefore, confined to the exercise of judicial powers, and they might fairly expect to reach a result satisfactory to their own consciences, while it commanded the respect of those whose interests were directly involved.

STATUS OF THE COMMISSION.

The present commission, neither by the mode of its appointment, nor by the nature of its duties, may be said to belong to tribunals of this character. Its duty will be discharged if it shall diligently and fairly seek to inform the Executive of certain facts touching a large extent of territory, in which the United States have no direct interest. Whatever may be the conclusion reached, no territorial aggrandizement, nor material gain in any form, can accrue to the United States. The sole concern of our government is the peaceful solution of a controversy between two friendly powers; for the just and honorable settlement of the title to disputed territory, and the protection of the United States against any fresh acquisition in our hemisphere on the part of any European State.

It has seemed proper to the commission, under these circumstances, to suggest to you the expediency of calling the attention of the governments of Great Britain and Venezuela to the appointment of the commission, and explaining both its nature and object. It may be that they will see a way, entirely consistent with their own sense of international propriety, to give the commission the aid that it is no doubt in their power to furnish in the way of documentary proof, historical narrative, unpublished archives, or the like. It is scarcely necessary to say that if either should deem it appropriate to designate an agent or attorney, whose duty it would be to see that no such proofs were omitted or overlooked, the commission would be grateful for such evidence of good will, and for the valuable results which would be likely to follow therefrom.

Any act of either government in the direction here suggested might be accompanied by an express reservation as to her claims, and should not be deemed to be an abandonment or impairment of any position heretofore expressed. In other words, and in lawyers' phrase, each might be willing to act the part of an *amicus curiæ*, and to throw light upon difficult and complex questions of fact, which should be examined as carefully as the magnitude of the subject demands. The purposes of the pending investigation are certainly hostile to none, nor can it be of advantage to any that the machinery devised by the government of the United States to secure the desired information should fail of its purpose. I have the honor to remain, your most obedient servant,

DAVID J. DREWER, President.

It is impossible, after reading this statement from the commission, to take Mr. Tucker's view, that it is an arbitration, forced by us upon Great Britain and not open to her evidence, or that it is an arbitration where we select all the arbitrators, and all "Americans, whilst Great Britain prefers a wider range of selection."

Another great question arises here, what is the answer to Mr. Tucker's paragraph reading as follows: "In effect, therefore, the proposition is, that if this *ex parte* commission makes its decision, the refusal of Great Britain to submit to it is *casus belli*. This seems to me to be without precedent in modern international procedure."

Briefly, the question is this: If the commission should report that England has taken and is taking Venezuelan territory, and proposes to keep it by war with, or intimidation of, Venezuela, is it *casus belli*?

The answer is, yes, if the United States choose to resort to the "last logic of

kings." If they have any right to interfere, as they have done already in the interest of peace and humanity by pleading for an arbitration; and if after that England should have no regard for human life and treasure, to say nothing of Venezuela's rights in the matter, and should attempt to coerce the latter State, then this country has the right to appeal to the God of battles.

The Monroe doctrine, based, as Mr. Tucker says, upon the broad right of national self-defence, will have been violated, and if this country proposes to adhere to it, there will never, possibly, be a case where enlightened public policy, humanity and national fair-dealing will go so closely hand in hand.

A thousand times better, if war should come, would it be if we could show that eternal right was on our side; and that our most eminent and impartial statesmen and jurists had furnished us the facts upon which to base our action, and to appeal to the judgment of all nations now, and our and their posterity for all time.

It may be "without precedent in modern international procedure," but if so, it is because no other nation has taken such wise and extraordinary measures to ascertain the right or the wrong of her own case.

Perhaps, also, so shrewd a politician as Mr. Tucker may read between the lines and infer that this very commission was appointed for the purpose, among others, of giving time for passion to subside and reason to resume her sway on both sides of the Atlantic. Mr. Tucker's usually logical mind must again have failed to lead him to the irresistible conclusions generally reached by him, when he uses these words: "It will be observed that nothing is said as to Venezuela and any action on her part contrary to the commission's divisional line. This gives the appearance that the commission is to act so as to control Great Britain, but not Venezuela."

Mr. Tucker seems to forget that at present we are dealing with England only; that our diplomatic correspondence lately has been with her alone; and that the questions are whether England has violated the Monroe doctrine, and whether she will submit to arbitration with Venezuela. There has never been any question about the latter's violating our doctrine, or refusing to submit to arbitration; but, on the contrary, she has been on her knees to Great Britain for years, praying for a peaceable settlement. In short, the title of the cause should be at present:

"THE UNITED STATES OF AMERICA V. THE KINGDOM OF GREAT BRITAIN.

In the *Grand Court of Public Opinion, which justly on each human deed sits as umpire.*"

Comparatively few people in this country want war; but there is a vast majority who want peace with honor, peace with the Monroe doctrine vindicated so far as this case is concerned, and no further.

Their sober second thought will utterly condemn the resolution offered recently by Senator Davis; but they will stand by the Administration, and if war should come, this country, with her 70,000,000 of inhabitants, will not be worsted by Great Britain, or any other power on earth. Believing that argument should proceed blows, the writer has ventured his views. He does not think there can be war; but he does not believe in cringing before Great Britain and suffering our American neighbor to be conquered upon the plea of a mere boundary dispute, and that in the teeth of a doctrine suggested by England, enunciated by President Monroe, and substantially adhered to up to the present date by our government.

France had to listen to us and treat us with respect in the case of Mexico. Why should not England now do likewise?

Though there may be many differences of opinion, may not all join in the prayer of the good and patriotic Mr. Tucker?

"May the doctrines of the Divine Man * * * come down upon the rising waves of international contention on both sides of the Atlantic and speak the words: Peace be still!"

R. DEVEREUX DOYLE.

Norfolk, Va., January 23, 1896.